

EXHIBIT B

1
2 IN THE UNITED STATES DISTRICT COURT
3 FOR THE SOUTHERN DISTRICT OF NEW YORK
4 Civil Action No. 10-141 (CM) (KF)

5 MARVEL WORLDWIDE, INC.,)
6 MARVEL CHARACTERS, INC.,)
7 and MVL RIGHTS, LLC.,)

8 Plaintiffs,)

9 vs.)

10 LISA R. KIRBY, BARBARA J.)
11 KIRBY, NEAL L. KIRBY and)
12 SUSAN N. KIRBY,)

13 Defendants.)
14)
15)

16 VOLUME I

17 VIDEOTAPED DEPOSITION OF

18 ROY THOMAS

19 October 26, 2010

20 10:06 a.m.

21 Holiday Inn Express
22 Orangeburg, South Carolina

23 ANNIE O'HARA, CCR-B-2340, SC Notary
24
25

APPEARANCES OF COUNSEL

On behalf of the Plaintiffs:

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On behalf of the Defendants:

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Los Angeles, California 90067

Videographer:

Michael Arrison

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1 Thomas

2 THE VIDEOGRAPHER: This is the start of
3 video labeled number one of the videotaped
4 deposition of Mr. Roy Thomas, in the matter of
5 Marvel Worldwide, Incorporated, et al., vs. Lisa
6 R. Kirby, et al; filed in the U.S. District
7 Court, Southern District of New York, Civil No.
8 10-141.

9 This deposition is being held at the
10 Holiday Inn Express, 118 Sleep Inn Road,
11 Orangeburg, South Carolina, on Tuesday, October
12 26, 2010; and it's approximately 10:06 a.m. My
13 name is Michael Harrison from TSG Reporting,
14 Incorporated, and I am the legal video
15 specialist. The court reporter is Annie O'Hara,
16 also in association with TSG Reporting.

17 Will counsel please introduce yourselves
18 for the record.

19 MS. KLEINICK: Jodi Kleinick from Paul
20 Hastings, representing Marvel Entities and
21 representing the witness for purposes of this
22 deposition.

23 MR. BARD: Eli Bard, deputy general
24 counsel for Marvel Entertainment, LLC.

25 MR. TOBEROFF: Marc Toberoff. I represent

1 Thomas
2 the defendants, the Kirby family.

3 THE VIDEOGRAPHER: Will the court reporter
4 please swear in the witness:

5 ROY THOMAS,
6 having been first duly sworn, was examined and
7 testified as follows:

8 EXAMINATION

9 BY MS. KLEINICK:

10 Q. Good morning, Mr. Thomas.

11 A. Morning.

12 Q. You're aware that this is a deposition in
13 connection with a lawsuit between Marvel and the
14 heirs of Jack Kirby involving the copyrights for
15 certain stories and characters in those stories that
16 Jack Kirby drew for Marvel; is that right?

17 A. Yes.

18 Q. And you understand that I represent Marvel
19 in connection with the lawsuit, and that I am
20 representing you in connection with your deposition
21 here today?

22 A. Yes.

23 Q. Can you please tell us how old are you?

24 A. I am 69 for another couple of weeks.

25 Q. When is your birthday?

1 Thomas

2 BY MS. KLEINICK:

3 Q. I'd like to mark for identification as
4 Thomas Exhibit 12 a document bearing production
5 number Thomas 2636 and 2639.

6 Mr. Thomas, I'd like to direct your
7 attention to the first page of this exhibit, Bates
8 number Thomas 2636.

9 A. Yes.

10 Q. Can you tell me what -- what is this?

11 A. This seems to be the note that Stan sent
12 me in, I guess, about -- it would have been about
13 1998, when he sent me that -- the copy of the
14 synopsis for part of Fantastic Four No. 1 that is
15 reprinted in the previous exhibit.

16 Q. You're referring to Exhibit No. 11?

17 A. Yes, Exhibit 11, yeah.

18 Q. I'd like to direct your attention to the
19 second and third pages of Exhibit 12, which are
20 marked Thomas 2637 and 2638.

21 A. Uh-huh.

22 Q. Did these two pages come with the page
23 that's Bates number Thomas 2636?

24 A. Yes.

25 Q. And is it your understanding that this is

1 Thomas

2 the original synopsis for Fantastic Four No. 1?

3 MR. TOBEROFF: Lacks foundation; leading.

4 THE WITNESS: It's --

5 MR. TOBEROFF: Assuming facts.

6 THE WITNESS: I'm sorry.

7 BY MS. KLEINICK:

8 Q. Mr. Thomas, what is Thomas 2637 to 2638?

9 A. It's the copy Stan sent me of the plot for
10 about the first -- approximately, the first half of
11 Fantastic Four No. 1, the origin part that
12 introduced the characters.

13 Q. And you said that he sent it to you in
14 about 1998 with the cover sheet that's marked Thomas
15 2636?

16 A. Yes.

17 Q. Was that the first time that you had seen
18 the synopsis for Fantastic Four No. 1?

19 A. No. I asked Stan at this time to send it
20 to me; although, it had been printed once or twice
21 in between, because I had seen it sometime in the
22 first couple of years that I worked at Marvel,
23 sometime -- no later than '66 or '67 Stan had told
24 he -- had shown this to me.

25 Q. And is the document that's marked Thomas

1 Thomas

2 2637 to 2638 the same synopsis that you recall
3 seeing back in the first couple of years after you
4 started working for Marvel?

5 A. Of course, you know, I didn't have perfect
6 recall of every word, but it seems to be exactly the
7 same, the document that I saw then.

8 Q. Do you remember writing the Alter Ego
9 article that appeared -- that we marked as Thomas
10 Exhibit 11?

11 A. Yes.

12 Q. Did you have a chance to make any
13 corrections to the article before it was printed?

14 A. Yes.

15 Q. And sitting here today do you believe that
16 what you wrote in the article is accurate?

17 A. Yes.

18 Q. And you testified earlier that the writer
19 of a particular issue in the '60s after you got to
20 Marvel would typically write the plot or synopsis.
21 Is the synopsis that you -- that is attached to
22 Exhibit 12 the type of synopsis that you were
23 referring to?

24 MR. TOBEROFF: Misstates testimony;
25 leading.

C E R T I F I C A T E

STATE OF GEORGIA:

COUNTY OF FULTON:

I hereby certify that the foregoing transcript was taken down, as stated in the caption, and the questions and answers thereto were reduced to typewriting under my direction; that the foregoing pages 1 through 196 represent a true, complete, and correct transcript of the evidence given upon said hearing, and I further certify that I am not of kin or counsel to the parties in the case; am not in the regular employ of counsel for any of said parties; nor am I in any way interested in the result of said case.

This, the 8th day of November, 2010.



ANNIE O'HARA, CCR-B-2340

ERRATA SHEET


Transcript of Roy Thomas
October 13, 2010 and October 14, 2010

<u>Page</u>	<u>Line</u>	<u>Per Transcript</u>	<u>Should Be</u>	<u>Reason</u>
10	16	various	varies	Transcription error
25	13 and 14 (and in passim throughout transcript)	Brodski	Brodsky	Spelling error
30	8	I remember calling myself	I don't remember calling myself	Transcription error
33	19	Berpoorten	Verpoorten	Spelling error
35	14	increasing	increasingly	Clarification
43	5	newspaper script that	newspaper strip that	Transcription error
45	8	Milly	Millie	Spelling error
45	10	Heady	Hedy	Spelling error
46	17	Ironman	Iron Man	Spelling error
46	18	we wrote	he wrote	Transcription error
50	15	"dialogue for"	"dialogue" for	Transcription error
76	20	comics code	Comics Code	Transcription error
87	7-8	Comics Book	Comix Book	Spelling error
88	22	Dennis	Denis	Spelling error
92	6	Magazine fancy	magazine – "fanzine"	Transcription error

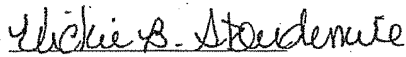
<u>Page</u>	<u>Line</u>	<u>Per Transcript</u>	<u>Should Be</u>	<u>Reason</u>
93	17-18	I'd like to direct your attention to page 9 of the article, the window that starts off "Synopsis for Fantastic Four No. 8." And there's a newspaper Puppet Master. Do you see that?	I'd like to direct your attention to page 9 of the article, the window that starts off "Synopsis for Fantastic Four No. 8. Prisoners of Puppet Master." Do you see that?	Transcription error
95	13	Evenier	Evanier	Spelling error
109	17	surfer	Surfer	Spelling error
119	24	Coleman	Colan	Transcription error
138	17-22	Oh Romita. I had some communications with John Romita. I don't think I did, unless I would have mentioned it in passing sometime in an e-mail, but I don't recall doing that. We have very little communication and so forth. There was certainly nothing substantive.	I have not had any communications with John Romita about this case.	Clarification
152	21	gone	gotten	Transcription error
158	9	you say that at a minimum would be a co-writer and	you say that at a minimum you would be a co-writer and	Transcription error
179	8-9	Carmen Empitimo	Carmin Infantino	Spelling error
191	5	regretted	regret	Transcription error

<u>Page</u>	<u>Line</u>	<u>Per Transcript</u>	<u>Should Be</u>	<u>Reason</u>
195	3	Jerry	Gerry	Spelling error
196	15	Jerry	Gerry	Spelling error
218	17	originated	originate	Transcription error
224	18	including the two I dialogue, did not have any	including the two I dialogued, I did not have any	Transcription error
232	3	don't	didn't	Transcription error
233	18	balloon	Balloons	Transcription error
237	14-16	So in that case, as far as I know, Jack did all the plotting and was credited, you know, and we all knew it.	So in that case, as far as I know, Jack did the plotting and, though he wasn't specifically credited with the plot, we knew he had done it.	Clarification
238	3	Well, -- yes.	Well, -- no. It was after Jack left Marvel in 1970.	Clarification
239	19	House Roy	Houseroy	Spelling error
240	16	do that	get at	Transcription error
241	3	enjoined	enjoyed	Transcription error
241	5	statement	sometimes	Transcription error
241	6	deprecating	deprecatingly	Transcription error
242	8-10	stories that were at alternate realty, that took off from a certain point in borrowed continuity, and developed story almost in a	stories that were set in an alternate reality, that took off from a certain point in normal continuity, and developed a story almost in a	Transcription error

<u>Page</u>	<u>Line</u>	<u>Per Transcript</u>	<u>Should Be</u>	<u>Reason</u>
246	21	Dan	Dann	Spelling error
253	3-5	pursuant to a Xerox, at my request, to him. And the Xerox that said it was on the way; that then this followed.	pursuant to a fax, at my request, to him. And the fax that said it was on the way; that then this followed.	Clarification
253	11-12	I had contacted Stan and asked him if he had it. Because, although it had been published once or twice, I wanted to publish it in Alter Ego and kind of do an analysis of it. So he sent me a Xerox saying it would have to be followed by mail, because it was just too dim to send a good Xerox of it.	I had contacted Stan by and asked him if he had it. Because, although it had been published once or twice, I wanted to publish it in Alter Ego and kind of do an analysis of it. So he sent me a fax saying it would have to be followed by mail, because it was just too dim to send a good Xerox of it.	Clarification
277	8	Meade	Romita	Transcription error
279	17	the seventies	the sixties	Clarification
280	16	Yes, I furnished some plot,	Yes, I furnished some plots,	Transcription error
291	14	He called Sol Brodsky, you know, a	He called in Sol Brodsky, you know, a	Transcription error
293	13	are.	were.	Transcription error
295	5	his work, and Stan didn't feel that he needed	his work, and Stan didn't feel that they needed	Clarification


Roy Thomas

Sworn to before me
this 2nd day of December, 2010


Notary Public